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No. 97-942

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

IN RE: AMTRAK "SUNSET LIMITED"
TRAIN CRASH IN BAYOU CANOT, ALABAMA,
ON SEPTEMBER 22, 1993,

JAMES ALTOSINO, *et al.*,
Petitioners,

v.

WARRIOR & GULF NAVIGATION COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF RESPONDENTS CSX TRANSPORTATION, INC. AND NATIONAL RAILROAD PASSENGER CORPORATION IN OPPOSITION

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QUESTION PRESENTED

Should this Court create a right to punitive damages in admiralty personal injury cases, contrary to the decisions of the courts of appeals and to established admiralty law and practice?

RULE 29 LISTING

The following are the parent company and nonwholly owned subsidiaries of CSX Transportation, Inc.:

CSX Corporation
Allegheny and Western Railway Company
The Baltimore and Cumberland Valley Rail Road Extension
The Central Railroad Company of South Carolina
The Cincinnati Inter-Terminal Railroad Company
The Cleveland Terminal & Valley Railroad Company
Dayton and Michigan Railroad Company
The Home Avenue Railroad Company
Midland United Corporation
North Charleston Terminal Company

The National Railroad Passenger Corporation has no parent companies or nonwholly owned subsidiaries.

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BRIEF OF RESPONDENTS CSX TRANSPORTATION, INC. AND NATIONAL RAILROAD PASSENGER CORPORATION IN OPPOSITION

STATEMENT OF THE CASE

A. The Maritime Casualty

On September 22, 1993, the M/V MAUVILLA, a commercial towing vessel pushing a tow of six loaded barges, ran into and displaced a railroad bridge owned by CSX Transportation, Inc. ("CSXT") that crosses Bayou Canot, a tributary of the Mobile River in Alabama. Shortly thereafter, the Sunset Limited, a coast-to-coast

passenger train operated by the National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak"), struck the displaced bridge and derailed into the bayou.

Surviving passengers and train crew members sued Warrior & Gulf Navigation Company, the owner and operator of the MAUVILLA, as well as the MAUVILLA's pilot and captain (collectively, "the WGN Defendants"). They also sued CSXT and Amtrak.

Representatives of deceased passengers and crew members also sued the WGN Defendants, CSXT, and Amtrak. The WGN Defendants and CSXT/Amtrak cross-claimed against each other, and CSXT and Amtrak filed claims against the WGN Defendants for property damage. *(The question presented in the Petition for Writ of Certiorari does not concern the wrongful death claims or the claims and cross-claims of the defendants.)* The Judicial Panel on Multidistrict Litigation ("MDL") consolidated all federal court cases for discovery and pretrial proceedings in the U.S. District Court for the Southern District of Alabama.

Petitioners, through their lead counsel, have conceded that few of the personal injury plaintiffs suffered any serious injury as a result of the casualty. *See* R. vol. 6, no. 1187 (Tr. of Feb. 8, 1996) at 25 ("many of these people . . . got their feelings hurt. . . . I personally do not know of one very serious personal injury case") (statement by one of Petitioners' lead counsel).[1] Consequently, Petitioners have pursued a ruling that would allow the personal injury plaintiffs to recover nonpecuniary—particularly, punitive—damages.[2]

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[1] Citations to "R." refer to the record in the U.S. Court of Appeals for the Eleventh Circuit.

[2] The term "nonpecuniary damages" encompasses punitive damages, as well as damages for loss of society and consortium. *See, e.g., Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1506 & n.7 (5th Cir. 1995) (and cases cited therein), *cert. denied*, 516 U.S. 1046 (1996).

B. The Decisions Below

The district court ruled that admiralty jurisdiction exists and that admiralty law governs all claims against all defendants in this MDL. Pet. App. C-9 - C-22, C-30. Petitioners did not challenge that ruling.[3] The district court then ruled that punitive damages, as well as damages for loss of society and consortium, were recoverable under admiralty law in the personal injury cases. Pet. App. C-30 - C-31. Respondents sought interlocutory review of that ruling, as well as the district court's rulings concerning the wrongful death actions.

On interlocutory review, the U.S. Court of Appeals for the Eleventh Circuit vacated (*inter alia*) the district court's ruling that punitive damages could be recovered in the personal injury actions, noting that it was "aware of no decision in the Supreme Court or in any of the circuit courts which has authorized punitive damages in a[n] [admiralty] personal injury case." Pet. App. A-20.[4]

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[3] Petitioners complain throughout their Petition about the application of admiralty law, asserting that the plaintiffs here are far "removed from maritime activity." Pet. at 12-13. *But Petitioners never sought review of the district court's finding of admiralty jurisdiction and its application of admiralty law.* Thus, Petitioners' complaint is irrelevant here. It is also erroneous: The *plaintiffs'* connection with maritime activity is not the touchstone for applying admiralty law. As the Eleventh Circuit commented,

> Here, we . . . have . . . an allision of a commercial tug and tow with a railroad bridge, that took place in the ordinary course of maritime business, on a waterway subject to heavy commercial traffic. . . . Accordingly, the actors in this case are entitled to the application of a body of laws—maritime laws—that have been fitted over the years for just these types of situations.

Pet. App. A-14. *Accord Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 541 (1995).

[4] The Eleventh Circuit also ruled that damages for loss of society and consortium are not recoverable in these admiralty personal injury actions. Pet. App. A-17. Petitioners have not sought review of that ruling, or of the Eleventh Circuit's rulings on applicable law and recoverable damages in the wrongful death cases.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS DECISION ACCORDS WITH *ALL* COURT OF APPEALS DECISIONS ON THE QUESTION PRESENTED.

Petitioners concede that "virtually every court of appeals . . . [has] denied punitive damages in maritime personal injury cases." Pet. at 21. In fact, *every* court of appeals to address the issue has refused to allow recovery of nonpecuniary damages in such cases. *See Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1512-13 (5th Cir. 1995) (en banc), *cert. denied*, 516 U.S. 1046 (1996); *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1505 (9th Cir. 1995), *cert. denied*, 516 U.S. 1046 (1996); *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1407-08 (9th Cir. 1994), *cert. denied*, 514 U.S. 1004 (1995); *Nichols v. Petroleum Helicopters, Inc.*, 17 F.3d 119, 122-23 (5th Cir. 1994); *Horsley v. Mobil Oil Corp.*, 15 F.3d 200, 202-03 (1st Cir. 1994); *Lollie v. Brown Marine Serv., Inc.*, 995 F.2d 1565, 1565 (11th Cir. 1993); *Smith v. Trinidad Corp.*, 992 F.2d 996, 996 (9th Cir. 1993); *Murray v. Anthony J. Bertucci Constr. Co.*, 958 F.2d 127, 131-32 (5th Cir.), *cert. denied*, 506 U.S. 865 (1992).[5]

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[5] Petitioners accompany their Petition with a list of court of appeals decisions. *See* Pet. App. D-1 - D-3. According to Petitioners' own list, nine court of appeals decisions have *denied* recovery of nonpecuniary damages. Petitioners list two decsions as purportedly authorizing such damages: *American Dredging Co. v. Lambert*, 81 F.3d 127 (11th Cir. 1996), and *Randall v. Chevron*, 13 F.3d 888 (5th Cir.), *cert. dismissed*, 512 U.S. 1265, *cert. denied*, 513 U.S. 994 (1994). *See* Pet. App. D-3. In fact, both decisions address the remedies permitted for *wrongful death*, not personal injury. *See American Dredging*, 81 F.3d at 130 (punitive damages in wrongful death action); *Randall*, 13 F.3d at 902-03 (loss of society damages in wrongful death action). Neither is apposite to the question presented by Petitioners here. And both come from circuits that have *denied* nonpecuniary damages in personal injury cases. *See* Pet. App. A-20 (Eleventh Circuit decision here denying punitive damages); *Nichols*, 17 F.3d at 122-23 (Fifth Circuit decision denying loss of society damages).

The courts of appeals have not varied this law according to the identity or "status" of the plaintiff. *See, e.g., Guevara*, 59 F.3d at 1498 (seaman); *Horsley*, 15 F.3d at 203 (seaman's spouse and child); *Chan*, 39 F.3d at 1407-08 (nonseafarers[6]); *Nichols*, 17 F.3d at 122-23 (longshoreman). Nor have they varied it according to the type of nonpecuniary damages at issue, *see, e.g., Guevara*, 59 F.3d at 1499 (punitive damages); *Chan*, 39 F.3d at 1408 (loss of society and consortium), or the place where the injury occurred, *see, e.g., Nichols*, 17 F.3d at 120 (high seas); *Horsley*, 15 F.3d at 200 (territorial waters). And many of these cases were decided by circuits with substantial maritime dockets (*e.g.*, Fifth, Eleventh, and Ninth).

Consequently, Petitioners have not presented this Court with any conflict among the circuits.[7] This Court—by denying certiorari in *Guevara, Glynn, Chan*, and *Murray*—has already declined to review the consensus of the courts of appeals.

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[6] The term "nonseafarer" means a person who is neither a seaman covered by the Jones Act, 46 U.S.C. app. § 688, nor a longshore worker covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.* *See Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 205 n.2 (1996) (using this definition).

[7] In an appendix, Petitioners identify a *few district court* decisions that allowed recovery of nonpecuniary damages in admiralty personal injury cases. *See* Pet. App. D-10 - D-11, D-14 - D-17. Petitioners neglect to mention that many of those decisions were rendered *before* the courts of appeals in the respective jurisdictions reached the opposite result. For example, Petitioners cite decisions by the Eastern and Western Districts of Louisiana before the Fifth Circuit decided *Guevara* and *Nichols*, and decisions by the Southern District of Florida before the Eleventh Circuit decided this case. *See id.* at D-11, D-15 - D-17.

II. THE COURT OF APPEALS DECISION ACCORDS WITH THE DECISIONS OF THIS COURT AND WITH HISTORICAL ADMIRALTY LAW AND PRACTICE.

Unable to present a conflict among the circuits, Petitioners attempt to manufacture a conflict between the Eleventh Circuit's decision in the personal injury cases here and this Court's ruling in a wrongful death case, *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996). The conflict is imaginary.

A. The *Yamaha Motor* Decision Arose from the Unique History of Maritime Wrongful Death Law.

Yamaha Motor was a wrongful death case. As this Court noted in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), "[t]he tortuous development of the law of wrongful death in the maritime context illustrates the truth of Justice Cardozo's observation that '[d]eath is a composer of strife by the general law of the sea as it was for many centuries by the common law of the land.'" *Id.* at 212 (quoting *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 371 (1932)).

The "tortuous development" of admiralty wrongful death law has been a function of the absence for many years of an admiralty action for wrongful death. In *The Harrisburg*, 119 U.S. 199 (1886), this Court declined to recognize such an action, noting that a wrongful death action had not been recognized in the United States or by maritime law generally. *See id.* at 213. After *The Harrisburg*, courts borrowed from state law to provide a cause of action and a remedy for wrongful death on navigable waters. *See The Hamilton*, 207 U.S. 398, 407 (1907).[8]

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[8] In 1920, Congress filled part of the gap in admiralty law when it enacted the Death on the High Seas Act, 46 U.S.C. app. § 761 *et seq.*, but courts continued to resort to state law for deaths on territorial waters. *See, e.g., The Tungus v. Skovgaard*, 358 U.S. 588 (1959); *Hess v. United States*, 361 U.S. 314 (1960).

In *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 409 (1970), this Court overruled *The Harrisburg* and recognized an admiralty law cause of action for wrongful death in territorial waters. The *Yamaha Motor* decision was addressed solely to the interpretation of *Moragne* and, specifically, whether *Moragne* was intended to terminate the historical practice of borrowing state law remedies in cases of wrongful death on territorial waters. *See Yamaha Motor*, 516 U.S. at 210 n.8 ("[w]e . . . confine our inquiry to the modest question whether it was *Moragne*'s design to terminate recourse to state remedies when nonseafarers meet death in territorial waters").

B. Admiralty Personal Injury Law Does Not Share That History.

None of the wrongful death history on which *Yamaha Motor* was based has any application to admiralty personal injury actions. Those actions have *always* been governed by admiralty law. *See, e.g., The Washington and The Gregory*, 76 U.S. (9 Wall.) 513 (1870) (admiralty law applied to action for injury to ferryboat passenger); *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918) (to action for injury to seaman); *Robins Dry Dock & Repair Co. v. Dahl*, 266 U.S. 449 (1925) (to action for injury to construction worker); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953) (to action for injury to carpenter); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959) (to action for injury to visitor on vessel).

And admiralty law has always provided *compensation*, not punishment, for personal injury. *See, e.g., The "City of Panama"*, 101 U.S. 453, 462 (1880) (admiralty law provides a "claim for compensation" to a nonseafarer (a passenger) injured on a ship). *Leathers v. Blessing*, 105 U.S. 626 (1882), provides an early example: The plaintiff, a nonseafarer, was injured on board a vessel berthed at a wharf in New Orleans. *Id.* at 626-28. The plaintiff's lawsuit proceeded as a personal injury action under

admiralty law. The action resulted in the award of *pecuniary* damages—*i.e.*, medical expenses and economic losses from his permanent disability. *Id.* at 628-30. Consistent with admiralty jurisprudence, neither this Court nor the lower courts in *Leathers* looked to state law for remedies. Nor did this Court or the lower courts even consider the imposition of punitive damages. *Accord The Max Morris*, 137 U.S. 1, 2 (1890) (damages awarded for personal injury were compensatory damages in the form of lost wages).[9]

There has never been a time when admiralty law looked to state law to supply the cause of action or the remedy for personal injury. *Yamaha Motor*, which concerned that historical practice in wrongful death cases, is entirely inapposite here.

Oddly, Petitioners try to use footnote 14 from *Yamaha Motor* to urge their position that this Court should create a right to punitive damages in personal injury cases. *See* Pet. at 6. Footnote 14 discusses "standards governing liability"—not recoverable damages—and reflects the historical differences between death and injury cases with respect to such standards. 516 U.S. at 216 n.14. Specifically, footnote 14 cites wrongful death cases decided during the period when admiralty law did not recognize a cause of action for wrongful death and courts necessarily looked to state law, including for standards of liability.

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[9] This law and practice date to the historical foundations of admiralty law. The first known set of admiralty rules—the "Laws of Oleron," which were promulgated in the twelfth century—reflected the concept that admiralty law should provide compensation for personal injury. *See* Laws of Oleron, Art. VI-VII (compensation should be provided to mariner injured or taken ill while working on a vessel), *reprinted in* 30 Fed. Cas. 1171, 1174 (1897); *id.* at Art. XX (if mariners are injured as a result of their fellow mariners' failure to help, the culpable mariners should provide for the injured mariners' recovery), *reprinted in* 30 Fed. Cas. at 1180.

See id. (citing *Hess*, 361 U.S. at 319, and *The Tungus*, 358 U.S. at 592-94).

As reflected in the injury cases cited in footnote 14 of *Yamaha Motor*, courts have always looked to admiralty law for those standards of liability in personal injury cases. *See id.* (citing *Kermarec*, 358 U.S. at 628, and *Pope & Talbot*, 346 U.S. at 409). Footnote 14 merely notes that historical difference on standards of liability. The footnote has no relevance to the question presented: *whether this Court should create a new right under admiralty law to punitive damages in personal injury cases.*

C. This Court Has Never Established a Right to Punitive Damages in Admiralty Personal Injury Cases.

Creation of such a new right to punitive damages would radically alter admiralty law. As reflected by the appellate court consensus discussed in Part I, *supra*, punitive damages are not favored by admiralty law. *See also In re Cambria S.S. Co.*, 505 F.2d 517, 522 (6th Cir. 1974) (a "punitive approach is inconsistent with the expressed compensatory philosophy of the maritime law"), *cert. denied*, 420 U.S. 975 (1975). In fact, admiralty courts distinguish between compensatory and punitive damages when deciding whether certain recoveries should be allowed. *See, e.g., In re Bankers Trust Co.*, 658 F.2d 103, 108 (3d Cir. 1981) (admiralty courts have discretion to award prejudgment interest in some circumstances "*because prejudgment interest in admiralty is compensatory, not punitive, in nature*") (emphasis added), *cert. denied*, 456 U.S. 961 (1982).

Admiralty law's disfavor of nonpecuniary damages is confirmed by the congressional enactments in the field. Congress has not seen fit to impose the sanction of nonpecuniary damages on admiralty tortfeasors. For example, nonpecuniary damages are not allowed under the Jones Act, which provides compensation to injured seamen. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32-33

(1990). Nor are they allowed under the Death on the High Seas Act ("DOHSA"), which provides compensation to the dependents of persons killed on the high seas. *See* 46 U.S.C. app. § 762 (1994); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 618-19 (1978). It is not surprising, therefore, that the general maritime law has shown a similar hostility to such damages. *See American Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994) ("federal common law[] in admiralty . . . is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field").

Far from creating some "confusion" that needs to be "remove[d]," *see* Pet. at 14, this Court's decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), simply reflects admiralty law's general hostility to nonpecuniary damages. The district court in *Miles*, a wrongful death case, had stricken the plaintiff's claim for punitive damages. *See id.* at 22. This Court refused to allow recovery of other nonpecuniary (loss of society) damages, *see id.* at 33, 37, confirming the disfavor in which such damages are held by admiralty law.

In *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818), a case of piracy,[10] this Court noted in dicta the possibility that punitive damages "might" be appropriate punishment for the *pirates*. *Id.* at 558. The pirates themselves were not the defendants, however, and the only remedy actually approved by this Court was "a just compensation" for the "losses actually sustained" by the plaintiffs. *Id.*

In the 180 years since *The Amiable Nancy* decision, this Court has not confronted a situation of such criminal wrongdoing as to prompt the sanction of punitive damages

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[10] The pirates, who were armed, "took possession of the Amiable Nancy, and robbed and plundered the libellants . . . and greatly ill-treated the libellants, and, in particular, knocked down and greatly bruised the libellant, Federick Roux, and put the libellants in bodily fear and danger of their lives." *Id.* at 547-48.

in an admiralty personal injury case. *Petitioners themselves concede that this Court "has never awarded punitive damages in a maritime personal injury case." Pet. at 22.*

D. There Is No Basis for Creating a New Right to Punitive Damages.

Petitioners apparently hope to persuade this Court to veer from the historical course of admiralty law and allow plaintiffs the windfall of punitive damages. In search of that windfall, Petitioners complain that the personal injury plaintiffs are being treated differently from the plaintiffs in the wrongful death cases in this MDL. *See, e.g.*, Pet. at 25. The wrongful death plaintiffs, under the reasoning of *Yamaha Motor* as applied by the Eleventh Circuit, have the opportunity to seek punitive damages. *See* Pet. App. A-17. The lack of a similar opportunity for personal injury plaintiffs is not, as Petitioners imply, irrational. *See* Pet. at 24-26. Reasonably, under the Eleventh Circuit's decision, defendants who cause death may be subjected to a greater sanction than defendants who cause injury.

Moreover, the new right to punitive damages urged by Petitioners would create its own set of anomalies. For example, it would impose more severe sanctions for causing injury than for causing death on the high seas. Under current law, if two siblings take a cruise that goes awry four miles out to sea, causing one sibling to drown and the other to be injured, punitive damages may not be recovered in either case. But Petitioners' proposed new right would provide punitive damages to the *injured* sibling. Because the survivors of the sibling who was *killed* could not seek punitive damages (under DOHSA), Petitioners' proposed new law would effectively reward a defendant for causing death rather than injury.

Yet another anomaly would exist if Petitioners succeeded in creating a right to punitive damages in ad-

miralty personal injury cases: the anomaly of giving non-seafarers greater recovery than similarly situated seamen. If crew members on the MAUVILLA had been injured in this casualty, they would *not* have a right to punitive damages (under the Jones Act and *Miles*). Thus, Petitioners propose a change in law that would give the *non*-seafarers here the right to pursue greater recovery than the seamen, *notwithstanding that admiralty law is supposed to show a special solicitude for seamen.*[11] *See, e.g., Miles,* 498 U.S. at 36; *Moragne,* 398 U.S. at 387.

The plaintiffs here are free to seek full compensation for their injuries. They complain merely of not being able to seek a premium of punitive damages. But punitive damages are not an entitlement. For instance, "[s]tate legislatures and courts have the power to restrict or abolish the common-law practice of punitive damages, and in recent years have increasingly done so." *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 39 (1991) (Scalia, J., concurring in judgment). Nebraska prohibits punitive damages entirely. *See Distinctive Printing & Packaging Co. v. Cox,* 443 N.W.2d 566, 574 (Neb. 1989). Massachusetts, Washington, Louisiana, and New Hampshire prohibit punitive damages unless expressly authorized by statute. *See Santana v. Registrars of Voters,* 502 N.E.2d 132, 135 (Mass. 1986); *Barr v. Interbay Citizens Bank,* 635 P.2d 441, 443 (Wash. 1981) (en banc), *amended on other grounds,* 649 P.2d 827 (Wash. 1982); *Billiot v. B.P. Oil Co.,* 645 So. 2d 604, 609 (La. 1994); N.H.

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[11] A similar disparity would be created in the existing litigation. Amtrak train crew members who have sued for their injuries may not recover punitive or other nonpecuniary damages under the FELA, the exclusive source of recovery against their employer, Amtrak. *See, e.g., Michigan Cent. R.R. Co. v. Vreeland,* 227 U.S. 59, 68 (1913); *Kozar v. Chesapeake & Ohio Ry. Co.,* 449 F.2d 1238, 1240-43 (6th Cir. 1971). (FELA and the Jones Act are governed by the same law on damages. *See Miles,* 498 U.S. at 29.) Thus, a passenger riding next to a train crew member and receiving identical injuries would be entitled to seek a greater recovery than the train crew member under the Petitioners' proposed new right.

Rev. Stat. Ann. § 507:16 (1996). And many states impose caps on punitive damages. *See, e.g.*, Colo. Rev. Stat. Ann. § 13-21-102 (West 1997) (punitive damages limited in most cases to amount equal to actual damages). These limitations demonstrate that even under state law, plaintiffs have no *right* to punitive damages.

Admiralty law has never recognized such a right. In the words of Petitioners themselves, "virtually every court of appeals . . . [has] denied punitive damages in maritime personal injury cases," and this Court "has never awarded punitive damages in a maritime personal injury case." Pet. at 21-22. In admiralty personal injury cases—where there is a long history of compensation, not punishment—no basis exists for turning that law upside down.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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